IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 9TH JUNE 2006 / 19TH JYAISHTA, 1928

LA.App..No. 605 of 2001()

LAR.128/1995 of III ADDL.SUB COURT, ERNAKULAM

.....

APPELLANT:

STATE OF KERALA

BY GOVERNMENT PLEADER SRI.ALOCIOUS THOMAS

RESPONDENTS:

---

1. K.R.ALEX, S/O.ROCKEY,
KOLLAMPARAMBIL, POONITHURA.

2. THANKAMANI @ MARIA THRESIA,
D/O.ROCKEY, KOLLAMPARAMBIL,
POONITHURA.

3. REJINA, D/O.ROCKEY, AGED 45,
W/O.JOSEPH KUNNALAKKATHU HOUSE,
MARADU P.O., MARADU VILLAGE.

BY ADV. SRI.T.KURIAKOSE PETER
SRI.ABRAHAM P.GEORGE

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 09/06/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.HEMA, J.

L.A.A.NO. 605 OF 2001

Dated this the 9th day of June, 2006

JUDGMENT

State is the appellant. The challenge in the appeal is against the award passed enhancing the land value of the acquired land belonging to the respondents-claimants at the rate of Rs.74,692.80 per Are. To assess the enhancement, the court below placed reliance upon Exhibit A1, judgment relating to L.A.R.No.169 of 1995. The Court below found that in the present case the acquired land is similar to the land acquired in L.A.R.No.169 of 1995, which was included in the 6th category of Block-I. The court found that the land acquired in the present case is to be given equivalent treatment with that of L.A.R.No.169 of 1995 where the land value was fixed at Rs.74,692.80 per Are.

2. The learned Government Pleader submitted that there is no justification for relying upon Exhibit A1, in the absence of evidence on comparability of two properties covered by Exhibit A1 and the acquired property. The reference court has not shown any reason why Exhibit A1 was relied upon, except by saying that both properties are similar. It was argued that as per judgment of a Division Bench of this Court in L.A.A.No.614 of 2000 dated

18.9.2003 in a batch of appeals, both sides were given an opportunity to adduce evidence and the awards passed in those cases were set aside. The land acquired in those cases and the present appeal are for the same purpose under the same notification.

3. Extensive extent of land were acquired at Maradu for the establishment of European Economic Community Whole Sale Vegetable Market. Lands were divided into several blocks and compensation was fixed. On reference, the reference court enhanced the compensation and the awards passed in certain references were set aside by the judgment referred above. One of the reasons shown therein is that the claimant has not established that the property covered by the judgment relied upon is comparable, though the burden is on the claimants to prove that they are entitled to enhancement of compensation. In this case also, there is no proof that the property covered by Exhibit A1 and the acquired land are comparable.

4. A Division Bench of this Court in the decision cited in the judgment referred to above also found that the State has failed to produce and mark basic documents before the court below to assess the market value with reference to various categories of

land. Therefore, the awards were set aside and the matter was remanded for fresh consideration and disposal, after giving an opportunity to both sides to adduce evidence.

5. On a consideration of the facts and circumstances of this case also, I find that this is a fit case where an opportunity should be given to both sides to adduce further evidence and substantiate the contentions. Except that Exhibit A1 was marked, no evidence was adduced from the side of the claimants to prove their claim. No oral evidence was adduced by either side. Though there is no Commission Report in this case. The nature of the property lying in different blocks is different and unless there is sufficient material to conclude the comparability, it may not be proper for the court to place reliance upon the judgment, Exhibit A1.

6. The property involved in this case is in Maradu Village, which is acquired under a notification issued under Section 4(1) of the Land Acquisition Act published on 27.7.1993 for the purpose of establishment of European Economic Community Whole Sale Vegetable Market. Since the cases arising from the same notification are remanded for fresh consideration and disposal, I find that an opportunity can be given to both sides to adduce fresh evidence. For this purpose, the award is set aside. The case is

remanded to the reference court for fresh consideration and disposal in accordance with law, after giving a reasonable opportunity to both sides to adduce evidence. Both parties shall appear before the court below on 3.7.2006.

This appeal is disposed of accordingly.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

L.A.A.NO.605 OF 2001

JUDGMENT

9.6.2006